# BEFORE THE IOWA BOARD OF HEARING AID DISPENSERS

IN THE MATTER OF:

CASE NOS 06-001 and 06-005

Mark W. Livingston License No. 00825,

NOTICE OF HEARING AND STATEMENT OF CHARGES

Respondent.

COMES NOW the Iowa Board of Hearing Aid Dispensers and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent was issued license No. 00825 to practice hearing aid dispensing in the State of Iowa on September 3, 2002, as recorded in the permanent records in the office of the Board and his license is current until December 31, 2010. Respondent's last known address is 1012 Waubeek Road, Central City, Iowa 52214.

### A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on May 4, 2009 before the Board of Hearing Aid Dispensers. The hearing shall begin at 11:00 AM and shall be located in the Lucas State Office Building, Fifth Floor Board Conference Room 526, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 645 IAC 11.12 to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges. Pleadings shall be filed with the Board at the following address: Board of Hearing Aid Dispensers, 5 Floor, Lucas State Office Building, Des Moines, Iowa, 50319.

<u>Presiding Officer</u>. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 641 IAC chapter 11. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for

hearing, you must comply with the requirements of 645 IAC 11.18. The hearing may be open to the public or closed to the public at your discretion.

<u>Pre-hearing Conference</u>. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 645 IAC 11.17.

Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: Julie Bussanmas, Assistant Attorney General, Iowa Attorney General's Office, 2 Floor, Hoover State Office Building, Des Moines, Iowa 50319.

Communications. You may not contact board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case.

### B. LEGAL AUTHORITY AND JURISDICTION

<u>Jurisdiction</u>. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 154A, and 272C.

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 154A, and 272C and 645 IAC chapter 124.

<u>Default</u>. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 645 IAC 11.21.

#### C. SECTIONS OF STATUTES AND RULES INVOLVED

#### Count I

Respondent is charged with failure to comply with the current code of ethics adopted by the Board, in violation of 645 IAC 124.2(1).

#### Count II

Respondent is charged with engaging in unethical conduct or in a practice that is harmful or detrimental to the public, in violation of Iowa Code sections 154A.24(3)(1) and (m), 147.55(3), and 272C.10(3); and 645 Iowa Administrative Code sections 124.2(4) and 124.2(9).

#### Count III

Respondent is charged with professional incompetency by substantially deviating from the standards of learning or skill ordinarily possessed and applied by other hearing aid dispensers or by failing to exercise the degree of care which is ordinarily exercised by the average hearing aid dispenser acting in the same or similar circumstances in violation of Iowa Code sections 147.55(2), 272C.10(2), 154A.20(1) and (3); and 645 Iowa Administrative Code sections 124.2(3) and 124.2(9).

#### D. FACTUAL CIRCUMSTANCES

- Respondent failed to supply clients who purchased hearing aids with receipts to include the serial numbers of the hearing aids and the full terms of sale clearly stated, as required by law.
- Respondent failed to maintain copies of the written receipts and written recommendations pertaining to hearing aids he dispensed.
- Respondent failed to inform clients of the terms of the manufacturer warranty, including that said warranty did not cover loss and damage of hearing aids.
- Respondent failed to obtain a health history and assessment of Client A prior to testing.
- Respondent's records for Client A show an incomplete audiogram and do not contain competent air or bone masking, speech testing, or loudness level testing.
- Respondent did not maintain adequate client records pertaining to the health screening, fitting, selection, and ordering of hearing aids and dates of contact with Client B.
- 7. Respondent's records for Client B show an incomplete audiogram, do not contain competent bone testing or masking, do not contain speech audiometry, and do not indicate whether Respondent obtained a health history and assessment prior to fitting Client B for hearing aids.
- 8. Respondent failed to respond to requests by Client B for assistance with the hearing aids she purchased, and no records were maintained of dates of contact, the date the hearing aids were received by mail with a request for a refund from Client B, or the date the hearing aids were mailed back to Client B.

#### E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 645 IAC chapter 12. If you are interested in pursuing settlement of this matter, please contact Julie Bussanmas, Assistant Attorney General, at 515.281.7175.

## F. PROBABLE CAUSE FINDING

On this 2<sup>nd</sup> day of February, 2009 the Iowa Board of Hearing Aid Dispensers found probable cause to file this Notice of Hearing and Statement of Charges and to order that a hearing be set in this case.

This notice of hearing and statement of charges is approved by the board on February 2, 2009.